

Neighborhood Housing Services

Delinquency Policies and Procedures Guide

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INTRODUCTION

The Neighborhood Housing Services Rehabilitation Loan Program, located within the Department of Housing and Community Development's (DHCD's) Bureau of Neighborhoods was established by Massachusetts Chapter 490 of the Acts of 1980. The purpose is to:

- ◆ help revitalize and stabilize neighborhoods through rehabilitation of existing housing for owner-occupants;
- ◆ assist low and moderate income property owners who desire to improve their property, but do not meet the standard criteria of conventional lending institutions; and
- ◆ assist low and moderate income property owners to bring their homes up to code and energy conservation standards.

There are 11 Neighborhood Housing Services (NHS) offices located in the Commonwealth of Massachusetts, of which 5 are affiliated with DHCD's NHS program. They are:

- ◆ Boston Homeowner Services Collaborative:
 - * Codman Square Neighborhood Development Corporation
 - * Dorchester Bay Economic Development Corporation
 - * Urban Edge Housing Corporation
- ◆ Cambridge Neighborhood Apartment Housing Services
- ◆ Chelsea Neighborhood Housing Services
- ◆ Quincy Neighborhood Housing Services
- ◆ Springfield Neighborhood Housing Services

The remaining NHS offices are:

- ◆ Coalition for a Better Acre (Lowell)
- ◆ Neighborhood of Affordable Housing (East Boston)
- ◆ Oak Hill Corporation Development Corporation (Worcester)
- ◆ Twin Cities Community Development Corporation (Fitchburg)

The information contained in this document is intended to serve as a general guide to assist NHS organizations resolve delinquent loan account issues. The guide includes information and strategies which should enable NHS organizations to resolve delinquencies, and minimize loan losses.

DELINQUENCY GUIDELINES

Collections

General

Financial delinquency occurs when the borrower fails to meet a legitimate contractual agreement between the lender and the borrower.

- 1 A loan is considered **30 days delinquent** (for example) if the June 1st installment has not been paid by June 30th.
2. A loan is **60 days delinquent** (for example) if the May 1st installment is unpaid by June 30th.
- 3 A loan is **90+ days delinquent** (for example) if the April 1st installment is unpaid by June 30th.

Notices

Collection notices for nonpayment are mailed to the borrower's designated address to inform him/her of an overdue payment. Typically there are three (3) types (samples are on pages 17-19) of notices are sent before telephone contact is initiated. They are:

- 1 A basic reminder of the late payment - sent 5 days after the due date.
2. An expanded demand overdue notice - sent 12 days after the due date.
- 3, An explicit demand for payment - sent 20 days after the due date

Suggested guidelines pertaining to telephone contact is specifically explained in the Debt Collection Regulations section (pages 9 and 10).

Suggested Alternative Policies and Procedures

Workouts

Certain loans are determined potentially eligible for foreclosure. When this situation occurs, the borrower's current financial status, reason for default, property value/condition, and the borrower's desire to develop a positive pay habit, should be taken into consideration when a workout recommendation is made. Foreclosure should be viewed as a final option, and only when all other reasonable alternatives have failed.

It is suggested that if the borrower is unable to make payment resulting from a change in his/her finances, the NHS should obtain an updated financial analysis status before considering any modification of the current contract arrangement. Instructions and a sample Financial Analysis form is provided on pages 14-16.

Types of workout agreements include:

1. **Liquidation Agreements** are written agreements giving the borrower a definite period of time in which to bring the loan current by immediately commencing payments in excess of the regular monthly installment.

Liquidation Agreements are commonly used to cure delinquencies that are short-term, and where the borrower can demonstrate an ability to resolve the delinquency over a brief period of time. The NHS, at its discretion, may enter into a written liquidation agreement which provides that the total delinquency be repaid within the shortest practical period of time. As a general rule, a Liquidation Agreement should not exceed six (6) months in duration; should clearly specify the timing and the amount of each payment to be made under the agreement; be financially feasible given the current income and assets of the borrower; and clearly outline the consequences should the borrower fail to comply with the terms of the agreement.

2. **Forbearance Agreements** are written agreements reducing or suspending the regular monthly installments for a specified period of time. At the end of that period, the borrower should resume regular monthly payments, as well as begin to pay additional funds toward the arrearage at scheduled intervals.

A Forbearance Agreement should only be used in extreme circumstances to resolve a problem that is anticipated to be short-term in nature, and when the NHS is reasonably certain that the borrower will be able to resume regular payments, including the delinquent amount that has occurred as a result of the agreement. In such instances, the forbearance terms should not be more than 6 to 12 months in duration. The agreement should specify the date and amount when higher monthly payments and regular payments resume.

3. **Loan Assumptions** permit a new borrower to take over or "assume" the responsibility for payments on an existing mortgage after purchasing the property from the original borrower.

Assumptions generally occur in rare instances due to the fact that policy prohibits releasing the original borrower from their obligation (liability) under the terms of the mortgage documentation.

4. **Modifications** are changes to any of the terms of the original loan and mortgage contract. Such changes may include interest rate reductions or extension of arrearages. A reduction

in borrower income, which has affected his/her ability to make current or scheduled monthly payments, is the most significant reason for a modification.

The modification of a delinquent loan is likely to be the most common form of foreclosure prevention. Changes to the contract terms should be considered when there is a reasonable expectation, both from a personal and financial perspective, that the borrower will be able to remain current under the amended terms outlined in the Modification Agreement.

DHCD will not allow a Modification Agreement to pay down, or to payoff, a non-DHCD related debt.

5. **Deed in Lieu of Foreclosure** allows for the acquisition of a property through voluntary conveyance of the property deed by the borrower in order to satisfy the mortgage debt and avoid a foreclosure sale.

This type of transaction is generally referred to as a pre-foreclosure sale (short sale) which results in a loss that would be less than the amount needed to pay the loan in full, but lesser than the loss if acquired and disposed through foreclosure.

Such sale should be pursued when it has been determined that it will not be financially feasible for the borrower to maintain ownership of his/her property.

All short sales are subject to approval by DHCD.

When requesting approval from DHCD, the narrative must include the following:

1. details of the offer;
2. nature of the hardship;
3. conditions for approval;
4. arguments for doing the short sale; and
5. other information as needed (brokers price opinion, appraisals, etc.)

Other Considerations

NHS organizations should implement and maintain accountability policies and procedures that adequately and properly ensure the resolution of any non-performing loans. These policies should include issues related to escrows as well as hazard insurance on all loans secured by a first mortgage lien. The NHS also considers the following:

1. establishing closer relationships with the municipal tax office to ensure that no other assigned loans become seriously delinquent.

2. establishing partnerships with agencies that provide Homebuyer Education Programs which include support programs for potential and existing delinquent agency loans.
3. reporting all loans to the local credit bureau with the payment history integrated into their system.
4. inspecting property when a loan becomes 90 days or more delinquent to ensure that the site is being properly maintained.
5. presenting the loan to the Loan Committee for assistance and direction, if the delinquency cannot be resolved. Minutes should be recorded to insure that committee's recommendations are documented.
6. placing all loans that become 90 days or more past due on non-accrual. Accruing interest on nonpayment loans is not an acceptable accounting procedure. Possible exceptions include:
 - a. loans that have been resolved through some type of positive pay habit; and
 - b. loans that are sufficiently secured, such that the nature and value of the collateral fully protects the NHS organization against loss of principal and interest.

SUGGESTED BENCHMARKS IF A DELINQUENCY CANNOT BE RESOLVED

Foreclosure in Process

All loans are suitable candidates for "workouts" and it is inevitable that foreclosure action will be required against a borrower who cannot meet his/her obligation for a variety of reasons. DHCD recommends that after all collection efforts have failed, and all foreclosure alternatives (modifications/workouts) have been considered and exhausted, the loan should be considered for foreclosure.

The NHS must receive DHCD's prior approval before the foreclosure process is initiated. DHCD may wish to contact the mortgagor to confirm that there are no other viable alternatives.

Once foreclosure is imminent, the loan should be referred to an attorney for further action. The loan should be identified as a "Foreclosure in Process". Foreclosure in Process are loans which have been referred to an attorney to initiate the process of foreclosure, and which have not gone to foreclosure sale. In addition, all status reports must be filed separately in the client's loan portfolio.

Bankruptcy in Process

Attorney assistance should be sought when an NHS organization receives a bankruptcy petition notice. All contact between NHS staff and the borrower should cease upon receipt of the bankruptcy petition until an automatic stay has been lifted. Any necessary contact should be accomplished through the borrower's attorney.

The loan should be identified as "Bankruptcy in Process" and all status reports be filed separately in the client's loan portfolio. Bankruptcies in Progress occurs when a bankruptcy proceeding has commenced in a court of law on behalf of a borrower to relieve his/her debt by transferring his/her assets to a trustee. This action effects mostly the borrower's personal liability and only rarely the mortgage lien. In most instances, an attorney is necessary to file a proof of claim in the bankruptcy court.

There are three (3) types of bankruptcies They are as follows:

1. **Chapter 7 Bankruptcy** provides for the appointment of a trustee for the purpose of liquidating the debtor's asset, and discharging the debtor of all personal debts.
2. **Chapter 11 Bankruptcy** involves the reorganization of a business for the purpose of repaying creditors from earnings of the reorganized business.

3. **Chapter 13 Bankruptcy** provides for the appointment of a trustee for the purpose of repaying creditors from the future earnings of the debtor. DHCD looks upon this form of bankruptcy as a court mandated modification contract. The bankruptcy attorney and borrower evaluates his/her debts, and schedules payments accordingly. If the borrower only intends to pay and not affirm the mortgage debt, loan payments should be monitored until the bankruptcy is dismissed.

DEBT COLLECTION REGULATIONS

The Commonwealth of Massachusetts Regulations 940 CMR, Debt Collection Regulations, are issued by the Office of the Attorney General and applies to the collection of debt. These regulations define the standards that are considered unfair, deceptive acts or practices for the collection of debts.

The do's and don'ts of conducting oneself when contacting a delinquent borrower are outlined as follows.

Borrower Telephone Contact is initiated when it becomes necessary to obtain a voice contact concerning the delinquency of their loan. It is the staff's responsibility that these calls be conducted in a professional manner. In addition:

- ◆ All telephone calls must be made during normal waking hours, usually 8:00 a.m. to 9:00 p.m., Monday through Saturday.
- ◆ Staff may not make more than two (2) complete collections calls per seven (7) day period to a given borrower's residence, and not more than two (2) per billing month to places other than the borrower's residence, unless the contact is at the borrower's request.
- ◆ Staff may not cause long distance call expenses to the borrower, and must inform the borrower of toll-free numbers and/or acceptance of collect calls.
- ◆ A record of all attempted contacts, telephone conversations, and interviews must be recorded on an established borrower's collection file. A sample collection file can be found on page 13 of this guide.
- ◆ When staff has a telephone conversation with the borrower at their residence or workplace, they must state the following:
 1. their name and the NHS organization name; and
 2. the purpose of the telephone call.

The NHS should tailor comments to the situation or the severity of the delinquency or default, and should treat each account on an individual basis since each situation is unique.

If the NHS is unable to contact the borrower at their residence or workplace, but is able to leave a message, only the staff member's name and telephone should be given.

If the borrower requests not to be contacted at his/her place of business, the NHS should:

1. note the request in the borrower's portfolio; and
2. ask for a written notice confirming the request. The borrower's request should be honored even if a written request is not provided.

Third Party Telephone Contact is initiated when a telephone call is made to the borrower's residence or place of employment where a party other than the borrower is contacted.

The Commonwealth's Debt Collection Regulations prohibits the discussion of collection accounts with any persons other than the borrower.

Unfair deceptive acts or practices include:

- 1 written or oral contact with persons other than the borrower overtly stating or implying the existence of the debt in question; and
2. indication to persons other than the borrower that the contact relates to the collection of a debt.

However, the following contacts are expressly permitted:

- 1 to creditors, service collection personnel, consumer reporting agencies or attorney(s) for either the NHS organization or the borrower; and
- 2 to a designated third party, as long as the scope of contact is consistent with the scope of permission granted by the borrower. This contract is the result of receipt of a signed letter from the borrower providing permission to discuss their account with a designated third party.

A Face-to-Face Interview is initiated when an NHS staff person either schedules a meeting with the borrower, or receives an unscheduled visit from the borrower.

Given the highly emotional nature of these collection interviews, appropriate discretion should be used in order to insure the safety of staff, the borrower, and visitors. NHS staff should immediately contact their supervisor in the event that an issue or threat arises. The interview should be conducted where the conversation cannot be "reasonably overheard" by any unauthorized person.

BORROWER(S) INFORMATION

If, as the borrower, you are considering foreclosure as an option to your current problems with your mortgage loan, there are several things you should consider.

The following is provided for informational purposes only and is not intended as legal advice. If you have any questions regarding how mortgage loan delinquency and foreclosure may affect you, you should consult legal and/or tax professionals.

Possible Unfavorable Credit Rating

Mortgage loan delinquency and foreclosure will, in most cases, be reported to all the major credit repositories in the United States. Once reported, this loan default information becomes a part of your permanent credit file where it may remain for five (5) years. This information can be disclosed to any party authorized to access your credit file. Mortgage loan delinquency and foreclosure is, in most cases, viewed negatively by credit lenders, insurance companies, and prospective employers. This adverse credit rating may limit your ability to obtain all forms of credit including mortgage loans, consumer loans, and credit cards. For more information regarding your personal credit record you may consult your local credit bureau or your attorney.

Possible Legal Liability

Foreclosure of your mortgage loan may not relieve you of responsibility for the debt. If your property does not bring a price at the foreclosure sale sufficient to satisfy your debt you may likely remain responsible for the remaining balance after foreclosure. If this legal action is successful you could be ordered by a court to pay the balance plus reasonable attorney fees and interest on the judgment amount. If you have questions regarding your legal liability you should consult your attorney.

Possible Additional Federal Income Tax Liability

The Borrower (mortgagor) will be subject to receipt of Internal Revenue Service, IRS Form 1099-A at any time if the lender (Mortgagee) forgives the debt. Form 1099-A is issued by January 31st for any debt forgiveness occurring in the prior year. Form 1099-A is issued by the mortgagee. A mortgage will be subject to debt forgiveness when the mortgagee collects an amount less than the outstanding amount owed under the loan. Debt forgiveness usually occurs at foreclosure by the mortgagee is also known as lenders acquisition. A fair market value is established at the time of the foreclosure sale. The fair market value will be the amount of the last qualified bid at a foreclosure. The last bid will be the amount that the mortgagee receives towards the balance of principle outstanding. If the balance or principle outstanding exceeds the fair market value, the borrower will be liable for tax obligations for that amount as income. In addition, borrowers are also subject to tax liability if they arrive at a settlement with the

mortgagee which is known as abandonment. A settlement is usually reached in a work out situation where the mortgagee accepts a principle payment to satisfy the debt at an amount less than the balance of principle outstanding. Debt forgiveness often occurs when negotiating settlement of deficiency notes.

Losses from the acquisitions or abandonment of property held for personal use are not deductible. For more in information on abandonment of secured property you should consult the Internal Revenue Service, a certified tax professional, or your attorney.

DELINQUENCY FILE

Name: _____ Account #: _____	
Address: _____	
Phone #: _____	
Employer: _____	
Position: _____	
Phone #: _____	
Loan secured by: 1 st 2 nd 3 rd	
Other liens: 1 st Mortgagee (with whom): _____ 2 nd Mortgagee (with whom): _____	
Last payment received on: _____ Amount: \$ _____	
Collection Activity (Results and dates of calls made)	

Instructions for Completing the Financial Analysis Form

Section 1. Personal Data

Enter names of all individuals responsible for the loan, and their addresses and telephone numbers.

Section 11. Monthly Income Data

Enter income in separate columns for each individual responsible for the loan. Make sure to include items such as alimony and/or child support received and other income such as rents. Once completed:

1. Add the "Borrower" column, and enter the total in its "Total Income" box.
2. Add the "Co-Borrower" column, and enter the total in its "Total Income" box.
3. Add the "Total" column, and enter the amount in its "Total Income" box.

Section III. Assets and Liabilities

1. Add the "Estimated Value" column, and enter the total in its "Total" box,
2. Add the "Amount Owed" column, and enter the total in its "Total" box.
3. Add the "Net Value" column, and enter the total in its "Total" box.

Section IV. Expenses

1. Add the "Monthly Payment" column, and enter the total in its "Total Expenses" box,
2. Add the "Amount Owed" column, and enter the total in its "Total Expenses" box.

Section V. Recap

1. Enter the "Total Income" from "Total" column in Section II.
2. Enter the "Total Expenses" from "Amount Owed" column in Section IV.

Final Instructions

1. Make sure you have signed and dated the form.
2. Be sure you have included copies of requested documents, e.g. tax returns, two (2) recent pay stubs.
3. Include your letter of explanation and any other documents which you believe have a bearing on the situation.
4. For your records, keep a copy of the information you submit.
5. Send the completed Financial Analysis package to the indicated NHS organization.
6. We are asking you to supply personal financial and other information in response to your loan inquiry. This information will make it possible for us to respond to your inquiry. **This does not constitute an application for a loan, but will be used to evaluate your situation and determine what, if any, options you may have to avoid default and foreclosure on your loan.**

FINANCIAL ANALYSIS**Section I. Personal Data**

Account Number: _____

Borrower's Name: _____

Property Address: _____

City or Town/State/Zip Code: _____

Home Telephone #: _____ Work Telephone#: _____

Best Time to Call: _____

Co-Borrower's Name: _____

Current Address (if different from above): _____

City or Town/State/Zip Code: _____

Home Telephone #: _____ Work Telephone #: _____

Best Time to Call: _____

Section II. Monthly Income Data**Income**

Description	Borrower	Co-Borrower	Total
Gross Salary/Wages	\$	\$	\$
Overtime Pay	\$	\$	\$
Alimony/Child Support	\$	\$	\$
Rentals	\$	\$	\$
Other (specify):	\$	\$	\$
Less:			
FICA Tax	\$	\$	\$
Federal Tax	\$	\$	\$
Other Deductions	\$	\$	\$
Total Income	\$	\$	\$

Section III. Assets & Liabilities

Description	Estimated Value	Amount Owed	Net Value
Home	\$	\$	\$
Other Real Estate	\$	\$	\$
Automobile(s)	\$	\$	\$
Savings/Checking/Others	\$	\$	\$
Other Assets (specify):	\$	\$	\$
Total Assets & Liabilities:	\$	\$	\$

Section IV. Expenses

Description	Monthly Payment	Amount Owed	Delinquent Yes or No	# of Months	Name of Financial Institute	Account Number
Mortgage	\$	\$				
Other Liens	\$	\$				
Automobile(s)	\$	\$				
Alimony/Child Support/Child Care	\$	\$				
Automobile(s)	\$	\$				
Other Loan Installments	\$	\$				
Credit Cards	\$	\$				
Utilities (electric, heat, telephone, water/sewer)	\$	\$				
Insurance	\$	\$				
Misc. (itemize)	\$	\$				
Total Expenses	\$	\$				

Section IV. Recap

Item	Current
Total Income (from Section II)	\$
Total Expenses (from Section IV)	\$
Total (Subtract Total Expenses from Total Income)	\$

I have described my present financial condition on the enclosed Financial Analysis form, and the attachments hereto, and I certify that all the information contained therein is true, and accurate to the best of my knowledge.

I hereby authorize creditors, depositories, or credit agencies to release information regarding my financial obligations to the service of my loan.

I further understand and realize that the information I am providing will be used to analyze my request for a modification of my loan due to a change in my finances.

Submitted on this day _____ of _____, _____.

by _____
Signature of Borrower Date

by _____
Signature of Co-Borrower Date

(First Reminder)

NHS Letterhead Stationery

Date

Borrower(s) Name(s)

Address

City/Town, State, Zip Code

Dear ***Name(s):***

As a reminder, (***name of NHS***) has not received your (***payment due date***) (***type of loan 1st, 2nd mortgage***) payment

Please be advised that if your payment is not received within seven (7) days other collection efforts will be assessed.

If you have any questions or need assistance, please call me at (***NHS telephone number***).

Sincerely,

Name of contact person

Title

(Second Reminder)

NHS Letterhead Stationery

Date

Borrower(s) Name(s)

Address

City/Town, State, Zip Code

Dear *Name(s)*:

We have not received your loan payment of (*amount*) that was due on (*date*). Because your payment was not received by (*1st notice due date*) (*name of NHS*) is requiring that (*amount*) be sent out today.

If you are experiencing a problem in making your payment, please call me at (*NHS telephone number*), so that we may try to work out an appropriate solution.

Sincerely,

Name of contact person

Title

(Final Notice)

NHS Letterhead Stationery

Date

Borrower(s) Name(s)

Address

City/Town, State, Zip Code

Loan Secured by (1st, 2nd Mortgage)

DEMAND FOR PAYMENT

Our records indicate that you have breached the terms of your Note and Mortgage by failing to pay the monthly installment due for the months of ***(date through date)***. To cure this breach, the total amount due ***(amount)*** must be received no later than twenty (20) days from the date of this letter. If your payment is made after ***(specific date after the 20 days)***, next month's payment must be included in the total amount due.

If you are unable to make your payment due to a change in your finances, please contact us immediately to discuss the circumstances of your delinquency.

You are hereby advised that failure to cure this breach by making full and complete payment of the amount due may result in making the entire balance due. Failure to pay may also result in the commencement of legal proceedings, the expense of which will include reasonable attorney fees.

Please also be advised that a credit report reflecting the past due status may be submitted to a credit reporting agency if you fail to fulfill the terms of your obligation.

If you have any questions regarding any of the above information, please contact me at ***(NHS telephone number)***.

Sincerely,

Name of contact

Title

cc: David Tomasso, BNSEO Program Representative
Department of Housing and Community Development